

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NINA VARGHIS, individual,

Plaintiff,

NO. 2:19-CV-1136-JLR

VS.

STIPULATED MOTION TO AMEND
MINUTE ORDER SETTING TRIAL DATE
AND RELATED DATES

APPLE INC., a California corporation,

Defendant.

Note on Motion Calendar: May 14, 2020

I. INTRODUCTION

Plaintiff Nina Varghis and Defendant Apple Inc., by and through their respective attorneys of record, respectfully submit this Stipulated Motion to Amend the Minute Order Setting Trial Date and Related Dates entered on August 26, 2019 (Dkt. No. 11) pursuant to LCR 7(d)(1) and 10(g). The Parties agree that additional time is necessary to properly prepare this matter for trial.

The Parties stipulate to a continuance of the trial date from January 11, 2021, to May 3, 2021, or if that date is not available, to a later date of the Court's choosing. The Parties stipulate to continue related deadlines for expert disclosures, discovery motions, discovery completion, dispositive motions, and trial-related deadlines in accordance with the continued trial date. The

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1 Parties stipulate to maintain the deadlines for joining additional parties and for amending the
 2 pleadings as set forth in the August 26, 2019 Minute Order.

3 **II. STATEMENT OF FACTS**

4 On November 2, 2018, Plaintiff filed a Complaint against Defendant in King County
 5 Superior Court. *See Plaintiff's Complaint*, Dkt. No. 2-1 at pp. 4-6. On June 28, 2019, the Parties
 6 stipulated to a trial continuance in state court to allow additional time for discovery and potential
 7 resolution. *Stipulated Motion and Order Amending Case Schedule*, Dkt. No. 2-1 at pp. 28-32.

8 On July 23, 2019, Defendant removed the matter to this Court. Dkt. No. 1. This Court
 9 issued a Minute Order Setting Trial Date and Related Dates, scheduling trial for January 11,
 10 2021. Dkt. No. 11. Under the Minute Order, expert disclosures are due on July 15, 2020, and
 11 discovery must be completed by September 14, 2020. *Id.* Dispositive motions are due for filing
 12 by October 13, 2020. *Id.*

13 **III. LEGAL STANDARD**

14 The Court has discretion to control the sequence and timing of discovery and to impose
 15 limitations or conditions on that discovery, including expert discovery. *See Bell Atlantic Corp. v.*
 16 *Twombly*, 550 U.S. 544, 593 n.13 (2007); FRCP 26(a)(2)(D). A scheduling order may be
 17 modified upon a showing of good cause. FRCP 16(b)(4).

18 The most important factor in determining whether to modify a scheduling order is
 19 whether the party seeking the modification diligently worked to meet the initial deadline. FRCP
 20 16 advisory committee's note to 1983 amendment; *Johnson v. Mammoth Recreations, Inc.*, 975
 21 F.2d 604, 609 (9th Cir. 1992) ("Rule 16(b)'s 'good cause' standard primarily considers the
 22 diligence of the party seeking the amendment."); *see also In re W. States Wholesale Natural Gas*
 23 *Antitrust Litig.*, 715 F.3d 716, 737 (9th Cir. 2013) (citing *Johnson* and holding that while the
 24 court may take into account prejudice, the primary consideration is diligence). "The district
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1 court may modify the pretrial schedule if it cannot reasonably be met despite the diligence of the
 2 party seeking the extension.” *Johnson*, 975 F.2d at 609 (citations omitted).

3 **IV. ARGUMENT**

4 The Parties have proceeded diligently but believe that additional time is necessary to
 5 complete discovery and prepare for the case for trial in light of recent events outside of the
 6 Parties’ control.

7 This is the first continuance of the trial date requested by the Parties since removal to this
 8 Court, and the second trial continuance during the pendency of this lawsuit. This continuance is
 9 requested to allow the Parties additional time to complete discovery and to provide sufficient
 10 time for further settlement discussion and mediation of this matter as a result of the impact of the
 11 COVID-19 pandemic on efforts to conduct discovery over the last two months.

12 At the time of this filing, the Parties have engaged in discovery, including but not limited
 13 to propounding interrogatories and document requests, seeking medical records, and taking
 14 plaintiff’s deposition. The Parties agree that additional time is needed for discovery, including
 15 taking the depositions of plaintiff’s treating physicians, expert discovery, and potential
 16 resolution, all of which unexpectedly have been impacted by the COVID-19 pandemic. While
 17 Defendant has scheduled the deposition of one of Plaintiff’s treating physicians, the Parties likely
 18 will need to continue the same in light of the extended shelter-in-place order to end of May 2020.
 19 Further, Defendant has not been able to serve Plaintiff’s second treating physician and continues
 20 to attempt to do so despite the difficulties the pandemic has raised. This fact witness discovery is
 21 necessary to prepare the Parties’ expert discovery.

22 The Parties further agree that continuing this matter is in the best interests of the Parties,
 23 and this Court, as it may allow the opportunity for this matter to resolve rather than result in trial.
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 25

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V. CONCLUSION

Based on the foregoing, it is further stipulated and requested that this Court amend the Minute Order Setting Trial Date and Related Dates accordingly.

DATED this 14th day of May 2020.

LOPEZ & FANTEL, INC. P.S.

BETTS, PATTERSON & MINES, P.S.

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The Honorable James L. Robart

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AT SEATTLE

NINA VARGHIS, individual,

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Plaintiff,

ORDER GRANTING STIPULATED
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VS.

APPLE INC., a California corporation,

Defendant.

**Note on Motion Calendar:
May 14, 2020**

THIS MATTER having come before the undersigned upon the foregoing stipulation of the Parties, and this Court having been fully advised;

IT IS HEREBY ORDERED that the trial date in this matter is continued from January 11, 2021, to August 23, 2021. A new case schedule shall be issued conforming to the new trial date.

DONE IN OPEN COURT this 15th day of May 2020.


James L. Robart
United States District Judge

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